Filed 1/7/14 In re Jose B. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE B.,

Defendant and Appellant.

F066296

(Super. Ct. No. JW129256-00)

OPINION

THE COURT[*]

APPEAL from a judgment of the Superior Court of Kern County. Peter A. Warmerdam, Juvenile Court Referee.

Gabriel C. Vivas, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Harry Joseph Colombo, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Cornell, Acting P.J., Kane, J. and Peña, J.

Minor José B. (henceforth José) contends on appeal that the evidence presented at the jurisdictional hearing was insufficient to support the finding that he was the perpetrator of a burglary. We will affirm.

PROCEDURAL SUMMARY

On June 29, 2012, the Los Angeles District Attorney filed a petition pursuant to Welfare and Institutions Code section 602, subdivision (a), alleging that José had committed a first degree residential burglary (Pen. Code, § 459). José denied the allegation.

Following a contested jurisdictional hearing, the juvenile court found the allegation true and sustained the petition.[1]

José was adjudged a ward of the court and placed on probation until his 21st birthday. His maximum confinement time was set at six years.

FACTS

A husband and wife lived in a house with their children in Compton. The mother-in-law would come to the house to take care of the children. On June 28, 2012, at about 7:30 a.m., the mother-in-law saw three men park a car on the street. Two of the men got out and the third lay down in the front passenger seat of the car. The mother-in-law noted the car's license plate number. The two men walked to the back of the house. The mother-in-law followed them to see if they were looking for her son. She saw José entering the house through a window. He was halfway through the window when she saw him. The window screen was on the ground. The second man was standing by the wall, and when he saw her, he said, "Not me, not me, not me," and he left, walking away on the street. José entered the house and then ran out the front door immediately. He ran to the car and got in. As he drove away, he honked at the second man, but the mother-in-law did not see if the second man got into the car.

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1 The case was then transferred to Kern County.

Inside the house, the window's curtains were down on the floor and some DVD's were also on the floor, but nothing was missing.

That same day, the mother-in-law spoke to the police and identified José, who had been detained. She identified him again at the hearing.

José had not been given permission to enter the house.

Defense Evidence

José had been staying at his aunt's apartment in Compton for about a week. On June 28, 2012, at about 9:30 a.m., an officer arrived. José had just woken up and was using a computer in the living room. The officer patted down and arrested both José and his cousin's boyfriend. José did not know why they were being arrested. He had not left the apartment that day and his cousin's boyfriend had been at home with him.

The officer took them to a patrol car. A second patrol car was parked about 40 yards ahead of the car they got into. The officer took them out of the car one at a time. The officer then released the cousin's boyfriend, but kept José in custody. José testified that the mother-in-law falsely identified him.

José's aunt testified that she was sleeping in the living room where José was also sleeping. He was there both when she went to bed the night before and when she woke up that morning.

Rebuttal Evidence

Officer London was in uniform that morning. He received a call regarding the residential burglary. He was given a description of the suspect vehicle and its license plate number. He located the empty car, and he proceeded down an adjacent alley, believing the suspects may have fled down the alley. He approached an apartment building and saw three juveniles sitting on a stairway. He went into the courtyard and decided the juveniles did not match the descriptions. Then he saw two other juveniles inside an apartment, standing near the open front door. He contacted those two juveniles,

one of whom was José. The apartment complex was three-fourths of a mile to one mile from the house that was burglarized.

DISCUSSION

José contends the evidence was insufficient to prove his identity as the burglar because the mother-in-law's identification was weak and there was no other evidence connecting him to the burglary. He explains that the mother-in-law's testimony he was halfway inside the house meant that "the person she identified had to be head-first, halfway inside the house, most likely leaving little to no opportunity for [her] to see his face. Indeed, [she] never said she saw the perpetrator's face at that time …. [¶] [She] next saw the perpetrator for a very brief moment as he ran out and away from the house and into the waiting car just before it sped off. [Citation.] Again, since [she] confronted the individuals in the back of the house, it can only be inferred that she saw mostly the exiting perpetrator's back as he ran toward and into the car."

José also argues that although the mother-in-law identified him in a field show-up, there was no evidence regarding "what police officials told [her] when asking her to accompany them or while they were on the way. It is quite likely they gave her a reason for asking her to make the trip, and also likely there was some discussion along the way. The question is whether she was … told they had 'caught' or 'had' the 'suspect' or something similar, that would lead her to think at least one of them was the perpetrator. Finally, [José] was alone and in court when she next identified him. [Citation.]"

José notes that the prosecution failed to provide any details of the mother-in-law's description of the perpetrators that would suggest her identification of him was reliable.

I. Law

When the claim is made on appeal of insufficient evidence in a delinquency proceeding, the standard of review is the same as in an adult criminal prosecution. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.) We look to see whether the record contains any substantial evidence that supports the finding of the trier of fact, and we view the evidence in the light most favorable to that finding. (*Id.* at p. 808.) The test on appeal is whether any "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1328.) "'We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence.' [Citation.]" (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 162.)

It is well settled that a single eyewitness's identification of a suspect as the perpetrator is sufficient to sustain a conviction. (*People v. Boyer* (2006) 38 Cal.4th 412, 480; see also Evid. Code, § 411 ["Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact."].) "Weaknesses in the testimony of eyewitnesses are to be evaluated by the [trier of fact]. [Citation.]" (*People v. Mendez* (2010) 188 Cal.App.4th 47, 59.)

"'Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.' [Citation.]" (*People v. Elliott* (2012) 53 Cal.4th 535, 585.) We can reject an eyewitness identification the trier of fact has accepted only if the eyewitness's testimony is physically impossible, or the falsity of the identification is apparent without resorting to inference or deduction. (*People v. Thompson* (2010) 49 Cal.4th 79, 124; *People v. Scott* (1978) 21 Cal.3d 284, 296 ["The uncorroborated testimony of a single witness is sufficient to sustain a conviction, unless the testimony is physically impossible or inherently improbable."].) If no such inherent improbability,

falsity, or physical impossibility appears in the identification testimony, it "'alone is sufficient to sustain the conviction[s].' [Citation.]" (*In re Gustavo M.* (1989) 214 Cal.App.3d 1485, 1497.)

A jury's finding on the believability of an eyewitness identification "will not be reversed unless it is clearly shown that under no hypothesis is there sufficient evidence to support it. [Citation.]" (*People v. Mendez, supra*, 188 Cal.App.4th at p. 59.) "'Apropos the question of identity, to entitle a reviewing court to set aside a jury's finding of guilt the evidence of identity must be so weak as to constitute practically no evidence at all.' [Citations.]" (*People v. Mohamed* (2011) 201 Cal.App.4th 515, 521.)

II. Analysis

In this case, the mother-in-law's eyewitness identification of José was sufficient evidence that he was a perpetrator of the burglary. The mother-in-law was on foot when she confronted the two males, one of whom immediately walked away. She returned to the front of the house and saw José run out of the front door and toward the car. After he got in, she saw him drive away and honk at the male who was walking.

It is speculation to conclude that the perpetrator must have entered the window headfirst and therefore the mother-in-law could not have seen his face. And it is speculation to conclude that she could not have seen his face as he ran out the front door, got into the driver's seat of the car, and drove away.[2] There was nothing inherently improbable, false, or physically impossible about her testimony. The evidence supports the finding that she was able to see José's face at some point as she watched him climb in the window, run out the front door, get in the car, and drive away. Furthermore, the evidence supports the inference that she did provide a description of the males, as evidenced by Officer London's testimony that the first three juveniles he encountered did

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2 José was the driver of the car he characterizes as the "waiting car" that "sped off."

not match the descriptions. She also provided a description and license plate number of the vehicle involved, which Officer London found in José's neighborhood.[3]

Although the prosecution should have further developed the mother-in-law's testimony and defense counsel could have elicited the facts José now complains are missing, those possibilities are inconsequential because sufficient evidence of identity was nevertheless presented. José's unrestrained interpretation of what the evidence really meant and his conjecture of what quite likely occurred are misplaced here. If he wanted to clarify what the mother-in-law really meant or investigate what he believed quite likely occurred, he could have done so by way of further cross-examination at the jurisdictional hearing.[4]

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[3] José requests that we take judicial notice of a Google map showing an aerial view of the location of his aunt's apartment building in relation to the location of the suspect vehicle. He asserts that the map demonstrates Officer London "must have walked past at least three separate buildings before reaching the entrance of [his aunt's] apartment complex." He explains that "[p]erhaps [the officer's] blotchy testimony regarding [José's] proximity to where the abandoned getaway car had been parked may have misled the court. That error, however, should not be allowed to support a felony conviction."

We decline to take judicial notice of the map. The asserted possibility that Officer London walked past at least three buildings in the alley before reaching the apartment complex where he noticed several juveniles would not change our analysis. Officer London testified that he had received descriptions of the perpetrators and that he eliminated three juveniles because they did not match the descriptions. The evidence supports the inference that he detained José and his cousin's boyfriend only because they matched the descriptions, then kept José in custody because the mother-in-law identified him, but not his cousin's boyfriend, as the perpetrator.

[4] José engages in a lengthy discussion of 10 questions he believes were relevant to the weight of the testimony and generally unanswered by the testimony, such as, "Did [the mother-in-law] know or have contact with [José] before the event?" and "What were the circumstances affecting [the mother-in-law's] ability to observe, such as lighting, weather conditions, obstructions, distance, and duration of observation?" Again, this type of evidence is undoubtedly valuable, but the omission of valuable evidence does not necessarily render insufficient the evidence that was in fact presented.

DISPOSITION

The findings and orders of the juvenile court are affirmed.